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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8
9 ROBERT HERNANDEZ,
10 Petitioner,
11 vs.
12 JO GENTRY, et al.,
13 Respondents.

Case No. 2:17-cv-02826-RFB-VCF
ORDER

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15 Petitioner has filed an application to proceed in forma pauperis (ECF No. 1) and a petition for
16 a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner had filed an earlier action before the
17 Honorable Jennifer A. Dorsey that challenged his custody pursuant to the same state-court judgment
18 of conviction, Hernandez v. Gentry, 2:17-cv-02565-JAD-CWH. On October 26, 2017, the court
19 dismissed that action because petitioner did not commence the action with either payment of the filing
20 fee or an application to proceed in forma pauperis. Petitioner then simultaneously paid the filing fee
21 in the earlier action and commenced this action with the correct financial documents. On November
22 21, 2017, the court reinstated the earlier action. This action now is redundant, and the court will dismiss
23 it.

24 Reasonable jurists would not find the court's decision to be debatable or wrong, and the court
25 will not issue a certificate of appealability.

26 IT IS THEREFORE ORDERED that the application to proceed in forma pauperis (ECF No. 1)
27 is **DENIED** as moot.

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1 IT IS FURTHER ORDERED that the clerk of the court file the petition for a writ of habeas
2 corpus.

3 IT IS FURTHER ORDERED that this action is **DISMISSED** without prejudice in favor of the
4 earlier-filed action, Hernandez v. Gentry, 2:17-cv-02565-JAD-CWH. The clerk of the court shall enter
5 judgment accordingly.

6 IT IS FURTHER ORDERED that a certificate of appealability shall not issue.

7 IT IS FURTHER ORDERED that the clerk shall add Adam Paul Laxalt, Attorney General for
8 the State of Nevada, as counsel for respondents.

9 IT IS FURTHER ORDERED that the clerk shall electronically serve respondents with a copy
10 of the petition and a copy of this order. No response by respondents is necessary.

11 DATED: December 5, 2017

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14 RICHARD F. BOULWARE, II
United States District Judge

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